



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **SEP 18 2013**

OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The AAO rejected the petitioner's appeal as untimely. The matter is now before the AAO on a motion to reopen. The AAO will dismiss the motion.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the arts. The petitioner asserts that an exemption from the requirement of a job offer is in the national interest of the United States. The director found that the petitioner had not established eligibility for the classification sought, or for the exemption from the job offer requirement.

The petitioner filed the Form I-140 petition on January 4, 2012. The director denied the petition on January 9, 2013 and notified the petitioner that he had 33 days to file an appeal, under the USCIS regulations at 8 C.F.R. §§ 103.3(a)(2)(i) and 103.8(b). USCIS received the appeal on Friday, February 15, 2013, 37 days after the decision was issued.

On June 10, 2013, the AAO rejected the appeal as untimely filed, as required under the USCIS regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(I). The AAO also stated that "counsel indicated that a brief would be forthcoming within thirty days," but the record contained no such brief, and therefore "the AAO would have summarily dismissed the appeal, had it been timely filed."

The AAO did not state that the petitioner could file a motion on the rejection (as opposed to the dismissal) of an appeal. The petitioner, through counsel, nevertheless filed a motion to reopen. On motion, the petitioner submits a copy of an appellate brief. Counsel acknowledges that "the brief was incorrectly mailed to the Phoenix, Arizona 290B address rather than the Administrative Appeal's [sic] Office," and asks that the brief receive consideration on motion.

The submission of the motion attempts to address the AAO's observation that the record did not contain an appellate brief. Counsel states: "The Administrative Appeal's [sic] Office . . . rejected the appeal, because the supplementary brief was never received by the office." The AAO, however, did not reject or summarily dismiss the appeal based on the missing brief. Rather, the AAO rejected the appeal as untimely, and stated that, because of the missing brief, the AAO would have summarily dismissed the appeal even if it had been timely.

The motion does not address or overcome the stated basis for the rejection of the appeal (*i.e.*, its untimely filing). Therefore, to reopen the proceeding in order to incorporate the brief would serve no practical purpose, even if the AAO had indicated that it would entertain a motion to reopen a rejected appeal (which it did not do).

ORDER: The motion is dismissed.